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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Iraq, submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Max van der Stoel, pursuant to Commission resolution 1996/72

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Introduction

1. The Special Rapporteur has referred in detail to the terms of his mandate in, inter alia, the introductions to his first four reports to the Commission on Human Rights (E/CN.4/1992/31, paras. 1-17; E/CN.4/1993/45, paras. 1-5; E/CN.4/1994/58, paras. 1-2; E/CN.4/1995/56, paras. 1-3; and E/CN.4/1996/61, paras. 2-3); additional references have been made in the introductions to most of his reports to the General Assembly. There was no substantive change to his mandate in the last year.

2. The present report is submitted pursuant to paragraph 11 of Commission on Human Rights resolution 1996/72 of 23 April 1996, as approved by Economic and Social Council decision 1996/277 of 23 July 1996. An interim report was submitted, pursuant to the same resolution, to the fifty-first session of the General Assembly (A/51/496 of 15 October 1996 and A/51/496/Add.1 of 8 November 1996). The Special Rapporteur intends the present report to be read in conjunction with his interim report to the General Assembly.

3. The Special Rapporteur has continued to receive information from a variety of sources. Notwithstanding the continuing lack of cooperation on the part of the Government of Iraq (notably its refusal to allow the stationing of United Nations human rights monitors throughout the country as requested repeatedly in resolutions of the General Assembly and the Commission on Human Rights), the Special Rapporteur has benefited considerably from information gathered by staff members of the United Nations Centre for Human Rights who have travelled to countries bordering Iraq. Specifically, the following three missions were conducted in the last year in order to receive testimonies and other information from refugees and other persons of interest recently arrived from Iraq: from 4 to 10 April 1996 in Jordan; from 13 to 25 October 1996 in the Islamic Republic of Iran; from 20 to 27 January 1997 in Jordan and Kuwait. Information received during the first two missions was included in the Special Rapporteur's interim report to the fifty-first session of the General Assembly, i.e. in A/51/496 and A/51/496/Add.1, respectively. Information received during the most recent mission has been included in the present report.

4. In addition to testimonies and other information received through the missions mentioned above, the Special Rapporteur has continued to receive information, including both general and specific allegations, from a wide variety of sources. The Special Rapporteur has also studied official documents of United Nations agencies and bodies relevant to the situation of human rights in Iraq.

5. With regard to the legal framework within which the Special Rapporteur assesses the compliance of Iraq with its freely undertaken obligations under international law, it is to be recalled that Iraq is a party to, inter alia, the Charter of the United Nations; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child;

the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education; the Constitution of the International Labour Organization (ILO); ILO Conventions No. 98 concerning the right to organize and bargain collectively, No. 107 concerning indigenous and tribal populations, and No. 111 concerning discrimination in respect of employment and occupation; and the four Geneva Conventions of 12 August 1949. It is also to be recalled that there are no special circumstances which Iraq may invoke by way of permissible excuses under international law for failure to respect its undertakings, nor has Iraq ever notified the Secretary-General of any derogation from its specific obligations (in this connection, see E/CN.4/1992/31, paras. 22-39). Consequently, all relevant obligations of Iraq maintain their normal legal effects. In addition, there exist special obligations of relevance to the human rights situation in Iraq as a result of a number of Security Council resolutions, notably resolutions 661 (1990), 666 (1990), 687 (1991), 688 (1991), 706 (1991), 712 (1991), 778 (1992), and 986 (1995).

6. The information contained in the present report is up to date as of 14 February 1997.

I. VIOLATIONS OF CIVIL AND POLITICAL RIGHTS

A. General situation

7. In so far as the politico-legal system in Iraq remained unchanged in the last year, there continued to be systematic violation of the civil and political rights of the Iraqi people throughout the country. This system has previously been reported on and analysed in detail by the Special Rapporteur, notably in his report to the fiftieth session of the Commission on Human Rights (E/CN.4/1994/58, paras. 159-189). In his interim report to the fifty-first session of the General Assembly, the Special Rapporteur recalled the main features of the prevailing political regime (see A/51/496, paras. 43-48). In short, Iraq is a dictatorial, totalitarian State which allows no political dissent. Freedoms of opinion, expression, association and assembly do not exist in Iraq. Of fundamental importance, the political regime is in violation of Iraq's obligations under article 21 of the Universal Declaration of Human Rights to ensure that the genuine will of the people is the basis of authority of government and under article 25 of the International Covenant on Civil and Political Rights to hold "genuine periodic elections ... guaranteeing the free expression of the will of the electors" and guaranteeing "freely chosen representatives". Rather, all authority is held in the hands of the President who, through all-powerful offices of government and the Arab Baath Socialist Party which he heads, conducts life in Iraq as he wishes.

8. Of vital importance to the maintenance of the present political regime in Iraq is the complex, vast and infamous security apparatus which the President controls directly and through his youngest son Qusay Hussein. The position of power enjoyed by the President is subject to the most extreme abuse which continues to bear especially heavily upon any threat of opposition - real or perceived. The Special Rapporteur has previously analysed the systematic abuse of power in Iraq (see E/CN.4/1994/58, paras. 177-184). The elevated and protected status both of the security apparatus and of the Baath Party extends the scope and effects of abuse of

power throughout the country. A substantial increase in official corruption (essentially government tolerated, if not encouraged, by the Government) and criminality has only exacerbated the situation, rendering the whole population subject to the arbitrary, widespread and self-centred interests of a privileged class of government officials and Baath Party leaders. Impunity even for serious assaults and extrajudicial killings encourages the abuse of power. This results in widespread violation of the rights to liberty and to respect for personal security. Such serious abuses of power over a period of decades, along with the effective proscription of dissenting opinion, expression, association or assembly, have acted to render Iraqis essentially compliant. In sum, the essence of human rights, i.e. respect for the dignity of the individual human being, has been and continues to be systematically and completely violated in Iraq.

B. The rights to life, liberty and personal security

9. The Special Rapporteur has reported about extrajudicial executions and indiscriminate killings of civilians which allegedly accompanied the use of Iraqi military and security forces during the events in northern Iraq beginning on 31 August 1996 (A/51/496/Add.1, paras. 5-10). The indiscriminate shelling of, inter alia, the city of Arbil, resulting in the death or injury of numerous innocent civilians, was confirmed. Persons found in the offices of opposition groups were reportedly summarily executed as was a group of 96 pesh merga who had been captured by Iraqi government forces.

10. During the same events in northern Iraq, many members of opposition groups (and sometimes their families) were arbitrarily arrested and detained with some allegedly being tortured (A/51/496/Add.1, paras. 13-17).

11. While Iraqi military forces subsequently withdrew from the territories of northern Iraq to which they had advanced, reports and allegations received allege that the Iraqi security services and their agents remain active in the region. Specific allegations of political killings by Iraqi security forces in the area include the cases of Ahmed Muhi Ahmed and Kutaiba al-Nakib who were killed on 9 November 1996 in the city of Dohuk.

12. In the course of the year, the Special Rapporteur has also received unconfirmed reports of periodic arrests, usually followed by at least some executions, of military and tribal leaders on the basis of real or imagined assassination plots. For example, allegations have been received that a large number of military officers were arrested at the end of June 1996 on suspicion of plotting to overthrow the regime; at least 30 officers are said to have been executed, including Brigadier General Ata Samaw'al who is said to have been the commander of the Special Communications Unit attached to the Office of the President.

13. Other reports of mass arrests followed by many executions were received subsequent and in relation to the attempted assassination of the President's eldest son, Uday Hussein, on 12 December 1996. Arrests and detentions without judicial orders are reported to have numbered in the thousands cutting across all military forces and security services, the Baath Party, tribal leaders close to the President, and even extending to within the President's immediate family.

14. In the south of the country, reports continue to be received indicating that a strong military and security presence remains with arbitrary arrest and detention being commonplace. In addition, there are reports of sporadic fighting between government forces and armed opposition groups with government forces exacting revenge through indiscriminate attacks upon the settlements of innocent civilians.

15. Testimony received from refugees recently arrived from central and southern Iraq confirm that arbitrary arrest and detention remain normal occurrences. Mistreatment in detention, including beatings and other tortures during interrogations, are said to continue to accompany most instances of arrest and detention. Testimony further affirms that corruption of the authorities has added to the arbitrariness of arrests and detentions with money being sought from detainees to buy their liberty and personal security.

16. While testimony would indicate that the penalties of disfigurement through amputation and branding are now rarely if ever applied, the Special Rapporteur observes again that the relevant decrees have yet to be abrogated. As such, decrees prescribing cruel and unusual punishments remain in force.

C. Disappearances

17. The Special Rapporteur has previously addressed this matter in several of his reports (E/CN.4/1992/31, paras. 60-64; E/CN.4/1993/45, paras. 42-49; E/CN.4/1994/58, paras. 26-33; E/CN.4/1995/56, para. 27; and E/CN.4/1996/61, para. 30). To update the matter, the Special Rapporteur notes that the Working Group on Enforced or Involuntary Disappearances has many thousand cases of disappearance in its database which are the responsibility of the Government of Iraq. Specifically, there are 16,199 cases still unresolved with the Government of Iraq so far only having responded specifically to the Working Group with regard to a few hundred cases of which a mere 130 have been clarified. This leaves Iraq with decidedly the worst record in the world. For the tens of thousands of persons who suffer the emotional, social and economic consequences of the disappearance of their loved ones, the persistent lack of an adequate response from the Government of Iraq worsens the suffering.

18. In view of the extremely large number of disappearances in Iraq, the Special Rapporteur remains disturbed by the effective refusal of the Government of Iraq to make any effort to assist the suffering families to discover the fate of their loved ones. In particular, as far as the Special Rapporteur is aware, the Government of Iraq has still not established even a national commission to address the matter, as has been repeatedly recommended by the Special Rapporteur.

19. The database maintained by the Working Group on Enforced or Involuntary Disappearances does not contain the cases of the more than 600 Kuwaiti and third-country nationals who went missing or disappeared after having been taken into custody by Iraqi forces during the occupation of Kuwait. The Special Rapporteur reported in summary with regard to this group the previous two years (E/CN.4/1995/56, para. 27 and E/CN.4/1996/61, para. 30), and in detail in his interim reports to the General Assembly at its

forty-ninth (A/49/652, paras. 12-33) and fiftieth (A/50/734, paras. 18-28) sessions. Since that time, there has been little change in the situation. Specifically, of the 625 files concerning 609 individuals (16 persons were known to have pseudonyms and therefore had two files) whose whereabouts remained unknown, during the last two years only two cases have been resolved: the remains of one person were returned to Kuwait from Iraq on 11 December 1994 and one young woman was returned to Kuwait from Iraq on 15 May 1996. The Government of Iraq has also indicated to Kuwait that the remains of another missing Kuwaiti are known to be buried somewhere in a fairly large area of northern Kuwait; the Kuwaiti authorities are trying to deduce where exactly the remains may be and to recover them.

20. As previously reported, a Tripartite Commission composed of representatives of the Governments of Kuwait, Iraq and the three main coalition Powers (the United States, the United Kingdom and France) meets periodically, pursuant to the cease-fire that concluded the armed conflict, to try to resolve the outstanding cases. The International Committee of the Red Cross (ICRC) also participates in these meetings. While Iraq chose not to attend the meetings of the Commission for a period of two years, it has been attending for the last two years and has supplied information regarding 128 persons, including the three cases mentioned above.

21. On 31 July 1996, the Government of Kuwait submitted to the ICRC for its evaluation the files of an additional 11 persons whom evidence indicates also were taken by Iraqi forces during the occupation of Kuwait and remain missing since that time. Should the ICRC consider the evidence sufficient, these cases will be added to the 607 which remain outstanding.

22. During their mission to Kuwait from 24 to 27 January 1997, United Nations staff members met with several relatives of the missing persons. From these meetings, it is clear that the unresolved situation has had serious effects upon almost all aspects of the lives of the families. Aside from the emotional and psychological effects of deep and prolonged grief exacerbated by the continuing uncertainty over the fate of their loved ones, there are often substantial socio-economic effects borne especially by dependent women. In addition, the prolonged suffering has given rise to negative physiological effects in some cases. These effects, like that of the unresolved fate of the missing persons themselves, must be seen as the responsibility of the Government of Iraq.

23. Some examples of the suffering of family members seem warranted in order to underline the fact that, six years after the liberation of Kuwait, matters are far from resolved for thousands of persons. In one family where the father had died some time before and the eldest son was taken by Iraqi forces during the occupation, the mother has become so depressed that she sits at home suffering constant headaches, high blood pressure, periodic crying episodes and insomnia; the family celebrates no occasions and felt compelled to move from their home so as to escape the environment in which they knew their son/brother. In another case of a young man named Mohammed, the mother is constantly distressed since she is forever reminded of his absence by frequent references (in other contexts) to his name. As a consequence, she has withdrawn, stopped walking, eats very little and has become physically fragile; she has recently been diagnosed as having diabetes which is said to

have been brought on by the stress. A third family had all three sons taken from their home by Iraqi forces in the middle of the night; one son's body was later returned during the occupation to the front door of the house, but twin brothers remain missing and the family is totally distraught. Another family where the father had died of natural causes prior to the occupation lost their only male member when the surviving son was taken by Iraqi forces; given the socio-cultural nature of Kuwaiti society, this has had serious effects on the family. Also among the missing were mothers with young children who are now being raised by their grandparents; the effects on such children as these will be profound.

24. With regard to the responsibility of the Government of Iraq for the fate of the missing and for the effects on their families, the Special Rapporteur had previously concluded that Iraq carries both general and specific legal responsibility. As a general matter, Iraq was responsible for the well-being of all civilians during its occupation of Kuwait. Iraq was also responsible for all persons specifically taken into its custody. As a result, Iraq should cooperate to the maximum extent with all efforts to determine the whereabouts or fate of all missing persons. To this end, Iraq should, inter alia, give access to the ICRC to its places of detention throughout the country (since many Kuwaiti detainees were known to have been taken to Iraq) in accord with the normal requirements of ICRC visits. Failure to do so would be in violation of Iraq's international obligations. Unfortunately, the Government of Iraq has so far failed to give access to the ICRC according to the latter's normal terms of reference.

D. Freedom of opinion and expression

25. The Special Rapporteur has previously reported on the total suppression of opposition opinion and expression (E/CN.4/1992/31, paras. 76-78; E/CN.4/1993/45, paras. 64-66; E/CN.4/1994/58, paras. 47-54; A/51/496, paras. 22-38). In the view of the Special Rapporteur, the total suppression of these freedoms is at the core of the situation of human rights in Iraq. That is, there is an absence of respect for the human dignity of the population as a whole in so far as the dictatorial leadership accepts absolutely no dissent and, in fact, essentially requires that thought, expression and behaviour conform to the tenets of Arab Baath Socialism and the whims of the ruling elite, i.e. President Saddam Hussein and his coterie. Over time, the normally creative sides of civil society have been suffocated such that not only has political dissent been liquidated but cultural, artistic and literary endeavour has also been vanquished if not perverted.

26. In his interim report to the fifty-first session of the General Assembly, the Special Rapporteur recalled again the deleterious effects of certain important laws and decrees, notably: Press Act No. 206 of 1968 which prohibits the writing of articles on 12 subjects including anything that may be deemed detrimental to the President, the Revolution Command Council (RCC) or the revolution; Act No. 94 of 1981 which requires the Ministry of Culture and Information to develop and supervise all aspects of media and culture "in accordance with the principles of the Arab Baath Socialist Party in Iraq"; and RCC Decree No. 840 of 4 November 1986 which prescribes penalties ranging from imprisonment to death for anyone

criticizing the President, the RCC, the National Assembly, the Government or the Baath Party. The Criminal Code also prescribes the death penalty for certain "media crimes" including incitement of public opinion against the ruling authorities; it was reported that four Iraqis were sentenced to death on 28 May 1996 under this provision.

27. It is clear that the Government's control of expression and culture as a department of State through almost 30 years of Baathist dictatorship has eradicated the expression of competing views and ideas and molded a number of young minds to serve the Baath Party and the leadership. Perversely, while the Government has successfully acted to eviscerate the essence of journalism (i.e. independent, accurate reporting and commentary), it has groomed an army of technicians to perform the required functions of propagandists in order to effect a further measure of control over the minds of the Iraqi population. This is achieved not only through the above-noted laws and severe penalties, but also through the ownership of the media itself. The Government owns both national television channels, both national radio channels, the main newspapers, and employs the "journalists" who work for them who have formal status of civil servants. Private media are subject to strict control and private satellite dishes are forbidden.

28. The Law on Publications is also an important instrument of repression of opinion and expression. The Law requires authorization for publication and imposes penalties for publishing any of a long list of books. The Law also prohibits anything which may damage relations with Arab countries as well as anything that challenges the revolution and its principles, the State, its institutions and its internal and external security. Supervision of foreign publications is no less severe, and foreign journalists must obtain permission to travel within the country and pursue their profession.

29. The practice of the profession of journalism is also controlled by the Government by requiring journalists to obtain governmental approval to work in the field. This is ostensibly due to national security concerns. Iraqi law includes many provisions against "espionage" and journalists who may have contacts with a variety of persons and have access to governmental information are especially vulnerable to accusations of espionage. Specific acts of "espionage" include unauthorized transmission of information to - or even contacts with - foreigners.

30. Not surprisingly, many journalists and other writers have fled Iraq in search of physical security and intellectual freedom. Many currently reside in Jordan. However, according to consistent testimonies received by United Nations human rights monitors visiting Amman in April 1996 and January 1997, these persons report continuing harassment by agents of the Government of Iraq including persons attached to the Iraqi Embassy in Amman. Fear among these persons was heightened with the publication in the 13 October 1996 edition of the newspaper Babil (owned by Uday Hussein) of a list of 60 "intellectuals" (including many journalists and other writers) who had left Iraq and were thus characterized as "traitors". Treason is punishable by death in Iraq.

II. THE RIGHTS TO FOOD AND HEALTH CARE

A. General Situation

31. The Special Rapporteur has reported and commented upon the rights to food and health in all but one of his previous reports to the Commission on Human Rights and to the General Assembly (A/46/647, paras. 52-54, 55 and 95-98; E/CN.4/1992/31, paras. 81-83, 138, 143 (w), 145 (o) and (p), and 158; A/47/367, para. 14; A/47/367/Add.1, paras. 6-14, 56 (a), (b) and (c), and 58 (a), (b) and (c); E/CN.4/1993/45, paras. 67-72 and 185; A/48/600, paras. 33-42, 44-46, 58-59 and 62-88; E/CN.4/1994/58, paras. 72-79, 152 and 186; A/49/651, paras. 89-98; E/CN.4/1995/56, paras. 44-47, 54, 67 (m) and 68 (c); E/CN.4/1996/61, paras. 30-40; A/51/496, paras. 61-86, 104-106 and 110-115). The situation has been dire for the majority of the population for many years. Given the situation, the Special Rapporteur thus welcomed, in his most recent report to the General Assembly, the signing on 20 May 1996 of a memorandum of understanding (MOU) between the United Nations and the Government of Iraq on the practical arrangements for the implementation of Security Council resolution 986 (1995), i.e. offering "food for oil". At the same time, the Special Rapporteur reported on the still deteriorating situation within the country and the still unimplemented formula.

32. Certainly, the needs of the Iraqi people described by the Special Rapporteur in his interim report, supported by evidence from international humanitarian agencies, remain considerable and urgent. The Iraqi people, therefore, cannot be satisfied with the mere conclusion of an MOU; they need to realize the benefits of this agreement without delay.

B. The "food-for-oil" agreement

33. Subsequent to the submission of the interim report to the General Assembly, the Secretary-General reported to the Security Council (S/1996/1015 of 9 December 1996) that he was satisfied that all arrangements had been made in accordance with Council resolution 986 (1995) to begin the effective implementation of the resolution. Later that day, the President of the Council announced that, in view of the Secretary-General's report, the humanitarian operation had gotten under way. The President also informed the Council that, as a result, the market prices of food and medicine in Iraq had almost immediately dropped dramatically, thus putting an end to black market speculation.

34. Oil began to flow from Iraq on 7 January 1997. Towards the end of January 1997, some US$ 200 million had been deposited in the escrow account of the Banque nationale de Paris. Unfortunately, no benefits have yet been realized by the Iraqi people in need. While funds have been dispersed to the United Nations Compensation Commission and the United Nations Special Commission and reserved for other purposes, the United Nations Sanctions Committee has so far approved only two contracts for the purchase of desperately needed food, i.e. one contract for US$ 50 million worth of Australian wheat and another contract for US$ 21 million worth of Thai rice. Dozens more contracts are awaiting approval from the Sanctions Committee; it

is to be hoped that, after the necessary scrutiny, approval will be forthcoming without delay so that the many in need will soon be able to benefit.

35. According to the interim report of the Secretary-General on the implementation of Security Council resolution 986 (1995) (S/1996/978 of 25 November 1996), a total of $1,320.68 million out of the $2 billion of sales is to be allocated to urgent humanitarian needs. Specifically, $804.6 million are for the purchase of food, $101.3 million are for the purchase of soap and detergents and for spare parts and other equipment for food distribution, $210 million are for the purchase of drugs and medical equipment, $145 million are for the rehabilitation of infrastructures in the electricity, agriculture and education sectors, $44.2 million are to meet urgent needs in the sector of water and sanitation supplies and equipment, and $15.4 million are for health infrastructure and nutritional needs. Of the total, $260 million are to be allocated to the three northern governorates.

36. With regard to the human rights to food and health care on a non-discriminatory basis, the MOU is to ensure an "equitable distribution" of the humanitarian supplies. According to the Secretary-General's interim report, this will be achieved in two ways: in the 15 governorates of central and southern Iraq, the Government will distribute the goods according to its current food rationing system, but will be observed to ensure "the equitable distribution of humanitarian supplies and ... the adequacy of revenues to meet Iraq's humanitarian needs" (para. 26); while in the three northern governorates distribution will be by the United Nations according to "current modalities and existing resources" (para. 20).

37. According to the same report, a total of 151 international "observation and reporting personnel" are to be based in Iraq. They will be divided almost equally between "geographical" and "sectoral" observation and will be assured "unrestricted freedom of movement and access ... in connection with the performance of their functions" (para. 15). Their findings "will be collated, analysed and integrated by the multidisciplinary observation unit, which will include experts in the areas of agricultural inputs and machinery, plant protection, animal health, food logistics, public health, pharmaceuticals, hospital equipment, water and sanitation, education and electricity" (para. 28). It is also intended that "guidelines and standards to ensure effective observation and analysis of the distribution of humanitarian supplies will be established by the unit" (para. 28).

38. The Special Rapporteur is pleased that the supervisory mechanism to ensure equitable distribution has been agreed, particularly in view of the serious allegations previously reported by the Special Rapporteur about the Government's manipulation of the food rationing system. In this connection, the Special Rapporteur is extremely concerned by reports that the Government of Iraq is seeking to limit the effectiveness of the observation system by refusing to allow the stationing of observers in substations throughout the country and by interfering with their freedom of movement by requiring internal travel permits. In addition, it has been reported that the Government of Iraq is insisting that the observers use expensive and insecure communications, thereby depriving the observation system of the necessary security of information required for the effective conduct of its mission.

39. The Special Rapporteur also views with concern reports of delays in putting in place the observation system. Specifically, reports indicate that there has been some delay by the United Nations in recruitment of adequate personnel and also that some technical aspects of their functions (e.g. communications) have still not been resolved with the Government of Iraq. Similarly, it has been reported that the Government of Iraq is seeking to place restrictions on the terms of recruitment of local United Nations staff.

40. Clearly, the needs of the long-suffering Iraqi people should compel the responsible parties to resolve without further delay all outstanding matters standing in the way of the effective implementation of the "food-for-oil" arrangement. The objective of the system of observation and, indeed, the "food-for-oil" formula as a whole is to facilitate the immediate provision on a non-discriminatory basis of foodstuffs and medicaments to those in need in accordance with their human rights. It is Iraq's obligation under international law to facilitate the process.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

41. The Special Rapporteur notes that, based upon the information in his possession, there has been essentially no improvement in the situation of human rights in Iraq. Fundamentally, all power is in the hands of a cruel dictatorship. As such, it cannot be said that any human rights are ensured in Iraq.

42. This said, there is at least and at long last the prospect of an improvement in the enjoyment of the rights to food and health. However, this depends very much on the efficiency of implementation of Security Council resolution 986 (1995) and the efficacy of the United Nations system of observation to ensure an equitable distribution of the badly needed foodstuffs and medicaments. In particular, this requires the free and unobstructed movement of United Nations observers throughout the country. Now that the "food-for-oil" formula has finally been accepted by the Government of Iraq, every effort should be made to ensure that the benefits of the sale of oil do in fact accrue to the very many in genuine and great need. They have suffered long enough.

43. Irrespective of the realization of the prospective improvements in the enjoyment of the rights to food and health, significant change in the situation of human rights in Iraq will only be possible through a radical change in the politico-legal order. Fundamentally, the genuine will of the people must become the basis of the authority of government. This will only be possible as the result of a general process of democratization which would feature enjoyment of the freedoms of thought, opinion, expression, association, assembly, movement and, above all, the rights to life, liberty and personal security. To this end, the Government of Iraq must abrogate all laws and decrees prescribing cruel, unusual, disproportionate and otherwise violative penalties. It must also abrogate all laws and decrees which repress the free expression and exchange of views and ideas. At the same time, the security apparatus and all other aspects of government, including the executive branch, must be brought under the rule of law.

B. Recommendations

44. In concluding that there has been essentially no improvement in the situation of human rights in Iraq, the Special Rapporteur again refers to all his previous recommendations, which remain valid.

45. In addition, and in particular, the Special Rapporteur recommends:

(a) That the Government of Iraq cooperate in the search for missing Kuwaiti and third-country nationals by allowing the ICRC full access to places of detention throughout Iraq in accordance with normal ICRC terms of reference and practices;

(b) That the Government of Iraq cooperate fully in the implementation of Security Council resolution 986 (1995) in particular by resolving immediately with the United Nations any outstanding technicalities which may be obstructing efficient and effective observation of equitable distribution and ensuring the free and unobstructed movement of observers throughout the country.